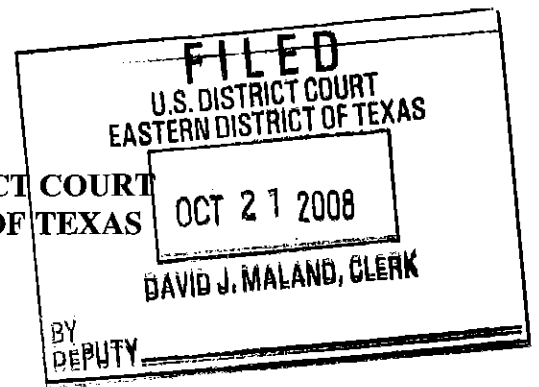


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION



UNITED STATES OF AMERICA

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v.

GREGORY JEROME MITCHELL

CASE NO. 4:07cr225

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on October 15, 2008 to determine whether the Defendant violated his supervised release. The Defendant was represented by Robert Arrambide. The Government was represented by Ernest Gonzalez.

On May 4, 2005, the Defendant was sentenced by the Honorable Robert C. Brack, United States District Judge, to forty six (46) months imprisonment, followed by a three (3) year term of supervised release for the offenses of distribution of less than 5 grams of a mixture and substance containing a detectable amount of cocaine base, more commonly known as crack, distribution of 5 grams and more of a mixture and substance containing a detectable amount of cocaine base, more commonly known as crack, and possession with intent to distribute 5 grams and more of a mixture and substance containing a detectable amount of cocaine base, more commonly known as crack. On February 2, 2007, Defendant began service of his supervised term. On November 5, 2007, this cause was transferred to the Honorable Richard A. Schell, United States District Judge, Eastern District of Texas.

On December 7, 2007, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (Dkt. 2), and on February 14, 2008, an amended petition was filed alleging additional violations of Defendant's terms of supervised release (Dkt. 5). The petition and amended petition asserted that Defendant violated the following conditions: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall not illegally possess a controlled substance; (3) Defendant shall not leave the judicial district without the permission of the court or probation officer; (4) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any controlled substance or any paraphernalia related to any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; (5) Defendant shall not associate with any person engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer; (6) Defendant shall report to the probation officer as directed by the Court or probation officer and shall submit a truthful and complete written report within the first five days of each month; (7) Defendant shall notify the probation officer ten days prior to any change in residence or employment; (8) Defendant must participate in and successfully complete a substance abuse treatment program which may include drug testing, outpatient counseling, or residential placement, and Defendant may be required to pay a portion of the cost of treatment and/or drug testing as determined by the Probation Office; and (9) Defendant must participate in and successfully complete a mental health treatment program which may include outpatient counseling, residential placement, or prescribed medication as approved by the probation officer, and Defendant may be required to pay a portion of the cost of this treatment as determined by the Probation Office.

The petition and amended petition allege that Defendant committed the following violations:

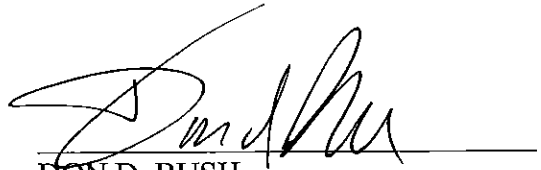
(1) Defendant was arrested in Lubbock, Texas on December 15, 2007 for possession of a controlled substance, 2nd degree felony, possession of marijuana, class A misdemeanor, and possession with intent to deliver a controlled substance, 3rd degree felony, and, at the time of this arrest, Defendant was associating with persons engaged in criminal activity; (2) on December 15, 2007, Defendant was arrested in Lubbock, Texas for tampering with government records, 3rd degree felony and evading arrests or detention, class B misdemeanor, and, at the time of this arrest, Defendant was associating with persons engaged in criminal activity; (3) Defendant failed to report to the probation officer as directed on July 23 and August 31, 2007; (4) Defendant failed to submit written monthly reports for the months of July, August, September, and October 2007; (5) on August 8, 2007, the U.S. Probation Officer was informed by Defendant's girlfriend that Defendant had moved from the his residence three weeks prior, and Defendant failed to notify the U.S. Probation Office of his change in residence; (6) Defendant failed to report for drug testing at Summit Counseling, Richardson, Texas as directed on March 20, May 8, June 25, July 9, and 25, August 2, 17, and 27, and September 5, 2007; and (7) Defendant failed to attend mental health counseling at Summit Counseling with Todd Lawhorn, Richardson, Texas, on June 7 and 28, July 26, 2007 and for the month of August, 2007, and Defendant was unsuccessfully terminated from counseling on September 25, 2007, due to his lack of attendance.

Prior to the Government putting on its case, the Defendant entered a plea of true to the alleged violations. At the hearing, the Court recommended that Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Court revoke the Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of eighteen (18) months, to run consecutively with any other sentence, with no supervised release to follow. The Court further recommends that Defendant receive credit for time-served since the date the federal detainer was lodged.

SIGNED this 10 day of Oct, 2008.

A handwritten signature in black ink, appearing to read "Don D. Bush", is written over a horizontal line.

DON D. BUSH
UNITED STATES MAGISTRATE JUDGE